

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN CRANE,

Petitioner-Appellant,

v

DIRECTOR OF ASSESSING FOR THE
CHARTER TOWNSHIP OF WEST
BLOOMFIELD, DIRECTOR OF ASSESSING
FOR THE CHARTER TOWNSHIP OF
BLOOMFIELD, and UPPER LONG LAKE
IMPROVEMENT BOARD,

Respondents-Appellees.

UNPUBLISHED

April 19, 2012

No. 301878

Tax Tribunal

LC No. 00-342138

Before: FORT HOOD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Petitioner appeals as of right a Michigan Tax Tribunal order granting a directed verdict in favor of respondents and dismissing his case in this special assessment district action. We reverse the tribunal's order and remand for entry of judgment in favor of petitioner.

This action pertains to the authority of the Upper Long Lake Improvement Board (the Lake Board) to initiate a dredging project for Mallard Canal. Upper Long Lake is a private lake that sits partially in Bloomfield Township and partially in West Bloomfield Township. In 1984, the Lake Board was established to implement a weed-control project for the lake. In 2005, both townships approved expanding the Lake Board's authority to include the dredging project, and in 2007 the Lake Board confirmed the special assessment roll for the project.

Petitioner challenges the validity of the assessment, claiming first on appeal that a petition signed by two-thirds of Upper Long Lake freeholders, approving the dredging project, was required before the Lake Board could implement the project, and that the tribunal erred in holding to the contrary. We agree.

In a civil action tried to the bench, a motion for directed verdict is treated as a motion for involuntary dismissal. *Samuel D Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995), citing MCR 2.504(B)(2). "The involuntary dismissal of an action is appropriate where the trial court, when sitting as the finder of fact, is satisfied at the close of the plaintiff's evidence that 'on the facts and the law the plaintiff has shown no right to relief.'"

Samuel D Begola Servs, Inc, 210 Mich App at 639, quoting MCR 2.504(B)(2). ““In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record.”” *Klooster v Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011), quoting *Mich Bell Tel Co v Dep’t of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994). Statutory interpretation issues are questions of law this Court reviews de novo. *Klooster*, 488 Mich at 295, citing *Brown v Detroit Mayor*, 478 Mich 589, 593; 734 NW2d 514 (2007).

The principal objective of statutory interpretation is to ascertain and give effect to the Legislature’s intent. *Klooster*, 488 Mich at 583, citing *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Courts must first look to the plain language of the statute. *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156; 802 NW2d 281 (2011), quoting *In re MCI Telecom Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). If the plain and ordinary meaning of the statutory language is clear, i.e., unambiguous, the Legislative intent is clear and the statute must be enforced as written. *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005); *Lansing Mayor v Pub Serv Comm*, 470 Mich 154, 157; 680 NW2d 840 (2004). A finding of ambiguity with regard to statutory language is a “finding of last resort.” *Id.* at 165 n 6.

MCL 324.30901 *et seq.* establishes the statutory procedure for inland lake improvements. MCL 324.30902 provides:

(1) The local governing body of any local unit of government in which the whole or any part of the waters of any public inland lake is situated, upon its own motion or by petition of 2/3 of the freeholders owning lands abutting the lake, for the protection of the public health, welfare, and safety and the conservation of the natural resources of this state, or to preserve property values around a lake, may provide for the improvement of a lake, or adjacent wetland, and may take steps necessary to remove and properly dispose of undesirable accumulated materials from the bottom of the lake or wetland by dredging, ditching, digging, or other related work.

(2) Upon receipt of the petition or upon its own motion, the local governing body within 60 days shall set up a lake board as provided in section 30903 that shall proceed with the necessary steps for improving the lake or to void the proposed project.

MCL 324.30904 provides a different procedure for private inland lakes, as opposed to public inland lakes:

Action may be initiated under section 30902 relating to any private inland lake only upon petition of 2/3 of the freeholders owning lands abutting the lake.

The crux of this issue is the interpretation of the word “action” in MCL 324.30904. Petitioner asserts that the “action” referred to is initiation of any new lake improvement project. In other words, he is focusing on subsection (1) of section 30902, which permits two-thirds of lake

freeholders to “take steps necessary to remove and properly dispose of undesirable accumulated materials from the bottom of the lake or wetland by dredging, ditching, digging, or other related work.” Respondent, by contrast, believes the “action” referred to in section 30904 is the creation of a lake board provided for in subsection (2), and that once two-thirds of the freeholders have approved creation of the lake board, the board may take on any improvement by resolution of the local governing body, pursuant to MCL 324.30906, which states:

(1) Whenever a local governing body, in accordance with section 30902, considers it expedient to have a lake improved, it, by resolution, shall direct the lake board to institute proceedings as prescribed in this part.

There is no case law interpreting these statutes. However, a reading of section 30902 clearly indicates that subsection (1) provides a mechanism for two-thirds of lake freeholders to petition the local governing unit to initiate a lake improvement project, and that subsection (2) provides a mechanism for *subsequent* creation of a lake board *to implement that project*. Section 30902(2) explicitly states that establishment of the lake board is done in order to “improv[e] the lake or to void the proposed project.” This language implies that a project is proposed first, and then, if the local governing body approves the project, it sets up the lake board. The Legislature’s use of the phrase “the proposed project” is also instructive; it is inconsistent with an interpretation of the statute that vests authority in the lake board to undertake any future projects without an additional petition. The reference in section 30904, therefore, to initiation of action under section 30902, applies to the proposal of a specific, discrete project. Thus, a private inland lake improvement project can only be proposed by a petition signed by two-thirds of lake freeholders.

MCL 324.30903 also supports our interpretation. It states that “[a] member of the county board of commissioners appointed by the chairperson of the county board of commissioners of each county *affected by the lake improvement project*” and “1 representative of each local unit of government, other than a county, *affected by the project*” shall serve on a lake board, in addition to several other representatives. MCL 324.30903 (emphasis added). Reference to a singular project again underscores the fact that a lake board is created to carry out a specific project, and does not have authority to take on additional projects absent petition authority.

Respondents appear to be interpreting section 30902 in such a way that the words “may provide for the improvement of a lake, or adjacent wetland, and may take steps necessary to remove and properly dispose of undesirable accumulated materials from the bottom of the lake or wetland by dredging, ditching, digging, or other related work” are replaced with “may create a lake board,” as if “improvement of a lake” equals creating a lake board. The statute simply does not say this. Respondents’ contention that the statute “provides that the local governing body of a local unit of government may, *on its motion or upon receipt of a petition of two-thirds of the freeholders owning lands abutting the lake*, establish a lake board for, among other things, improvements to a lake, including dredging” combines subsections (1) and (2) of section 30902 and alters the meaning of the statute.

Respondents’ argument, that section 30906 permits a local governing body, by resolution, to direct the lake board, once it exists, to initiate a lake improvement project whenever the local government chooses, is also unavailing. Section 30906 states explicitly that a local governing

body may only direct a lake board's actions in accordance with section 30902. As explained, section 30902 is modified by section 30904, allowing for proposal of a project only by a two-thirds majority petition of lake freeholders. Therefore, section 30906 is also subject to this modification, and local governing units may not use this subsection to skirt the requirement that private lake freeholders approve lake improvement projects by two-thirds majority.

Respondents also argue that section 30908 permits the lake board to determine the scope of a project and establish a special assessment district pursuant to a resolution of the local governing body. MCL 324.30908 provides:

The lake board, when instructed by resolution of the local governing body, shall determine the scope of the project and shall establish a special assessment district, including within the special assessment district all parcels of land and local units which will be benefited by the improvement of the lake. The local governing body may delegate to the lake board other ministerial duties including preparation, assembling, and computation of statistical data for use by the board and the superintending, construction, and maintenance of any project under this part, as the local governing body considers necessary.

Respondents read this provision too broadly, asserting that it is acceptable for an established lake board to implement any lake improvement project upon resolution of the local governing body. However, section 30908 again refers to "the project" in the singular, indicating that it applies only to a discrete project proposed under section 30902. As discussed previously, such projects may only be initiated by two-thirds of lake freeholders under section 30904. Section 30908 is a mere procedural guide for implementation of an approved project, and does not grant local governing bodies the power to direct a lake board to commence new projects absent two-thirds majority approval of lake freeholders.

Finally, respondents' assertion, that creation of a lake board is unnecessary if a petition is required for each new project, is unpersuasive. A single project undertaken by a lake board can require management over many years. In this case, the Lake Board has been overseeing the lake weed control project for more than 25 years.

Our interpretation of sections 30902 and 30904 seems particularly justifiable upon examination of the facts of this case. The Lake Board was established by petition of two-thirds of Upper Long Lake's freeholders in 1984 for the purpose of controlling the growth of weeds in the lake and distributing equitably the cost of doing so. The first annual assessment was \$33,000. For 20 years, the Lake Board carried out its duties pertaining to weed control, and then in 2004 the question was raised whether canal dredging should be added to the scope of the Lake Board's duties. When West Bloomfield and Bloomfield Townships finally passed resolutions authorizing the Lake Board to begin canal dredging, the cost was estimated at \$580,500. Respondents admit no petition signed by two-thirds of Upper Long Lake's freeholders was submitted for the purpose of complying with sections 30902 and 30904. To permit a local governing body to authorize a Lake Board to begin a new improvement project, on a private lake, that would increase the lake freeholders special assessment approximately seventeen-fold, without permission of a two-thirds majority of lake freeholders, seems to be precisely the type of action the Legislature intended to prohibit by enacting section 30904.

Because a petition signed by two-thirds of lake freeholders was required to initiate the canal dredging project, and respondents admitted at the pleading stage that no such petition was submitted, expansion of the Lake Board's authority to include canal dredging was in violation of MCL 324.30904. Therefore, petitioner is entitled to judgment on this issue as a matter of law. The tribunal erred by involuntarily dismissing petitioner's claim based on lack of evidence because no evidence was required for petitioner to show he was entitled to relief.

Because the Lake Board did not have the authority to initiate the canal dredging project, we need not address petitioner's argument that West Bloomfield Township was not properly represented on the Lake Board during implementation of the project.

Reversed and remanded for entry of judgment in favor of petitioner. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly